

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**ESNTION RECORDS, INC. a/k/a** §  
**ESNTION SILVER ET AL.** §  
  
**Plaintiff** §  
v. §  
  
**JONESTM, INC. a/k/a or f/k/a** §  
**TM CENTURY, INC.,** §  
  
**Defendants** §

## **DEFENDANT'S DESIGNATION OF EXPERT WITNESSES**

Pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure and the parties' agreements, Defendant TritonTM, Inc. d/b/a TM Studios, Inc. ("Defendant") serves this Designation of Expert Witnesses. Discovery is ongoing. Defendant reserves the right either to amend or supplement these designations as a result of new or additional information obtained through discovery and/or new or revised opinions from the Plaintiffs' experts.

## **I. EXPERT WITNESSES**

Defendant may call the following individuals to testify as expert witnesses at the trial of this matter concerning the issues set forth below:

1. Warren W. Cole  
Warren W. Cole, LLC  
2704 Wroxton Road  
Houston, Texas 77005  
(713) 839-1046

Mr. Cole is a Certified Public Accountant and Certified Valuation Analyst. He is expected to testify regarding the damage issues in this case, including all categories of damages alleged, as well as the methodology underlying Plaintiff's damage claims and the opinions of Plaintiff's experts. Mr. Cole will offer opinions in these areas both generally and in specific rebuttal to the opinions, reports and/or testimony of Plaintiffs' designated experts. Mr. Cole's opinions and the bases for those opinions are detailed in his report provided to Plaintiff,

incorporated herein by reference. His credentials, publication history, four-year testifying history, fee arrangement, and materials relied upon are disclosed in his report and the attachments thereto. Mr. Cole may also offer rebuttal testimony, opinion or otherwise, in response to any opinions offered by expert witnesses designated by Plaintiffs.

2. Mr. Tom Mazzetta  
President and Founder  
Mazzetta Promotion, Inc.  
7332 Erin Court  
Niwot, CO 80503  
(303) 652 0326

Mr. Mazzetta is a music promoter with over 30 years experience in all facets of the music promotion industry, including but not limited to promotion of recording artists, retail sales and marketing, foreign licensing and distribution, and serving as a label executive. He has worked for various record labels, large and small, promoting the labels' artists nationally and internationally. Mr. Mazzetta's background and qualifications are set out in more detail in his report provided to Plaintiff. Mr. Mazzetta will offer opinions on the matters within his experience and expertise, including industry customs in the music promotion industry, both generally and in specific rebuttal to the assumptions, opinions, reports and/or testimony of Plaintiffs' experts, Jules Kamin and Thomas Leavens, and the testimony of Mr. Bill McCormick. Mr. Mazzetta's opinions and the bases for those opinions are detailed in his report provided to Plaintiff, incorporated herein by reference. His credentials, publication history, four-year testifying history, fee arrangement, and materials relied upon are disclosed in his report and the attachments thereto. Mr. Mazzetta may also offer rebuttal testimony, opinion or otherwise, in response to any opinions offered by expert witnesses designated by Plaintiffs.

3. Bruce C. Morris  
Danya W. Blair  
Scott D. Marrs  
BEIRNE, MAYNARD & PARSONS, L.L.P.  
1300 Post Oak Boulevard, Suite 2500  
Houston, Texas 77056  
(713) 623-0887

Mr. Morris, Ms. Blair and/or Mr. Marrs may provide factual and opinion testimony as to attorneys' fees issues in this matter. Mr. Morris, Ms. Blair and Mr. Marrs are of the opinion that any fees incurred by Defendant in this matter are reasonable and necessary and are justified based on the nature of the claims asserted herein. Redacted copies of the fee bills will be produced at the time of trial. Mr. Morris, Ms. Blair and Mr. Marrs may also offer rebuttal testimony, opinion or otherwise in response to any opinions offered by expert witnesses designated by Plaintiffs, if any, as to the reasonableness of attorney's fees incurred by any party in this case. A copy of these witnesses' resumes are available at [www.bmpllp.com](http://www.bmpllp.com).

## **II. FACT WITNESSES WITH EXPERT KNOWLEDGE**

1. Mr. David Graupner  
15 Magnolia Street  
Eureka Springs, AR 72632  
(479) 981-4355

Mr. Graupner was the President of Defendant during the relevant time periods, and has factual knowledge relating to the liability and damage claims made by Plaintiff in this lawsuit and Defendant's defenses and responses to same. Mr. Graupner is not a retained witness. However, he has qualifications and expertise in Defendant's specific industry, as well as the music and radio broadcast industries generally. His background and qualifications are described by Mr. Graupner in his deposition taken in this case, and in his Affidavit (with attached CV) previously provided to Plaintiff's counsel. Mr. Graupner may provide opinion testimony within his expertise regarding the liability and damage claims made by Plaintiff, Defendant's defenses and responses to same, business operations and practices in the Defendant's industry, and how Defendant's practices conform with customs in the industry.

2. Mr. Marcus Hill  
TM Studios, Inc.  
2002 Academy Lane, Suite 100  
Dallas, Texas 75234  
(972) 406-6843

Mr. Hill is Defendant's Vice-President of Operations, and has factual knowledge relating to the liability and damage claims made by Plaintiff in this lawsuit and Defendant's defenses and responses to same. Mr. Hill is not a retained witness. However, he has qualifications and expertise in Defendant's specific industry, as well as the music and radio broadcast industries generally. His background and qualifications are described by Mr. Hill in his deposition taken in this case. Mr. Hill may provide opinion testimony within his expertise regarding the liability and damage claims made by Plaintiff, Defendant's defenses and responses to same, business operations and practices in the Defendant's industry, and how Defendant's practices conform with customs in the industry.

## **III. CROSS DESIGNATION OF PLAINTIFFS' DESIGNATED WITNESSES**

Plaintiff designated the following individuals as expert and/or lay opinion witnesses in this matter. Defendant reserves the right to call these witnesses by direct or cross-examination at the trial of this case, and to elicit both factual testimony and expert or opinion testimony within the witness's demonstrated areas of expertise, if any.

1. Jules Kamin  
6830 Wilshire Blvd., Suite 1102  
Los Angeles, California 90048  
323-653-9555
2. Thomas Leavens  
79 Salem Lane  
Evanston, Illinois 60203  
847-673-4118

**IV. RESERVATION OF CERTAIN RIGHTS**

Defendant reserves the right to designate additional or responsive experts in accordance with the Federal Rules of Civil Procedure, the Court's Docket Control Order and any amendment thereto, other Court order(s), and/or any subsequent agreement(s) by the parties to this action.

Defendant reserves the right to call un-designated rebuttal expert witnesses whose testimony cannot reasonably be foreseen until the presentation of evidence by Plaintiff against Defendant.

Defendant reserves the right to withdraw or de-designate the designation of an expert prior to testimony and to positively aver that such previously designated expert will not be called as a witness at trial and to re-designate same as a consulting expert who cannot be called by opposing counsel.

Defendant reserves the right to call as a witness any custodian of documents and/or witnesses required to authenticate documents, including business records or other records whose admissibility is disputed by Plaintiff.

Defendant reserves the right to elicit any expert testimony or any lay opinion testimony at the time of trial from any qualified person that would be of benefit to the Court or jury to determine material issues of fact pursuant to the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ Danya W. Blair  
Bruce C. Morris - Attorney in Charge  
Beirne Maynard & Parsons L.L.P.  
Texas State Bar No. 14469850  
Danya W. Blair  
Texas State Bar No. 00790315  
1300 Post Oak Blvd., Suite 2500  
Houston, Texas 77056  
Phone: 713-623-0887  
Facsimile: 713-960-1527

**ATTORNEYS FOR DEFENDANT  
TRITONTM, INC. D/B/A TM STUDIOS,  
INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on the following attorney of record via certified mail on this 10th day of August, 2009.

Ms. Wendy B. Mills  
The Law Office of Wendy B. Mills  
100 Crescent Court, Suite 700  
Dallas, Texas 75201

/s/ Danya W. Blair  
Danya W. Blair